

The Honorable Richard A. Jones

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

STATE OF WASHINGTON; STATE OF CALIFORNIA; STATE OF COLORADO; STATE OF CONNECTICUT; STATE OF DELAWARE; DISTRICT OF COLUMBIA; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF MAINE; STATE OF MARYLAND; COMMONWEALTH OF MASSACHUSETTS; STATE OF MICHIGAN; STATE OF MINNESOTA; STATE OF NEW JERSEY; STATE OF NEW MEXICO; STATE OF NEW YORK; STATE OF NORTH CAROLINA; STATE OF OREGON; COMMONWEALTH OF PENNSYLVANIA; STATE OF RHODE ISLAND; STATE OF VERMONT; COMMONWEALTH OF VIRGINIA; and STATE OF WISCONSIN,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF STATE; MICHAEL R. POMPEO, in his official capacity as Secretary of State; DIRECTORATE OF DEFENSE TRADE CONTROLS; MIKE MILLER, in his official capacity as Acting Deputy Assistant Secretary of Defense Trade Controls; SARAH HEIDEMA, in her official capacity as Director of Policy, Office of Defense Trade Controls Policy; UNITED STATES DEPARTMENT OF COMMERCE; WILBUR L. ROSS, in his official capacity as Secretary of Commerce;

No. 2:20-cv-00111-RAJ

**MOTION OF BRADY FOR LEAVE TO
PARTICIPATE AS AMICUS CURIAE IN
SUPPORT OF PLAINTIFFS**

**Note on Motion Calendar:
February 13, 2020**

1 BUREAU OF INDUSTRY AND SECURITY;
2 CORDELL HULL, in his official capacity as
3 Acting Undersecretary for Industry and
4 Security; RICH ASHOOH, in his official
5 capacity as Assistant Secretary of Commerce
6 for Export Administration,

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Defendants.

1 Brady hereby moves for leave to participate as *amicus curiae* in support of the Plaintiffs
 2 in this litigation. A proposed brief is attached hereto as Exhibit 1. Neither party opposes this
 3 motion. In support of its motion, Brady states:

4 1. Brady is a non-profit organization dedicated to reducing gun violence through
 5 education, research, and legal advocacy. Its membership includes individuals who are concerned
 6 with, and affected by, public health and safety issues stemming from gun violence.

7 2. Plaintiffs seek a preliminary and a permanent injunction prohibiting Defendants
 8 from implementing or enforcing rules promulgated by the State and Commerce Departments that
 9 would remove technical data related to 3D-printed firearms from the U.S. Munitions List. The
 10 Plaintiffs' lawsuit raises vitally important legal questions about the Second Amendment and the
 11 Administrative Procedure Act.

12 3. Brady has a substantial interest in ensuring that state and federal laws—including
 13 the Second Amendment of the United States Constitution and the Administrative Procedure
 14 Act—are not interpreted or applied in a way that would jeopardize the public's interest in
 15 protecting individuals, families, and communities from the effects of gun violence.

16 4. Brady participated in the rulemaking process that led to the Final Rule being
 17 challenged by the Plaintiffs in this litigation. In particular, Brady submitted comments on the
 18 proposed rules published by the State and Commerce Departments. *See* Exhibit 3.

19 5. Brady has also filed numerous briefs as *amicus curiae* in cases involving the
 20 constitutionality and interpretation of gun laws, including a brief opposing the broad distribution
 21 of 3D printed gun materials in *Washington v. U.S. Dep't of State*, 318 F. Supp. 3d 1247 (W.D.
 22 Wash. 2018), and a brief concerning the dangers of 3D printed guns in *Defense Distributed v.*
 23 *U.S. Dep't of State*, 838 F.3d 451 (5th Cir. 2016). More broadly, Brady has filed briefs in
 24 numerous cases involving firearms regulations including *McDonald v. City of Chicago*, 561 U.S.
 25 742 (2010), *United States v. Hayes*, 555 U.S. 415 (2009), and *District of Columbia v. Heller*, 554
 26 U.S. 570 (2008).

27 6. District courts have inherent authority to permit non-parties to participate as *amici*
 28 *curiae* in a case and broad discretion in deciding whether to permit *amicus* briefs. *See Hoptowit*

1 v. *Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982). “District courts may consider amicus briefs from
 2 non-parties ‘concerning legal issues that have potential ramifications beyond the parties directly
 3 involved or if the amicus has unique information or perspective that can help the court beyond
 4 the help that the lawyers for the parties are able to provide.’” *Skokomish Indian Tribe v.*
 5 *Goldmark*, No. C13-5071JLR, 2013 WL 5720053, at *1 (W.D. Wash. Oct. 21, 2013) (quoting
 6 *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal.
 7 2005)) (some internal quotation marks omitted). Generally speaking, “courts have exercised
 8 great liberality in permitting an amicus curiae to file a brief in a pending case.” *In re Roxford*
 9 *Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (quoting *United States v. Louisiana*, 751 F.
 10 Supp. 608, 620 (E.D. La. 1990)).

11 7. A brief will typically be accepted if it is “timely and useful.” *Ellsworth Assocs.,*
 12 *Inc. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (internal quotation marks and citation
 13 omitted). Brady’s brief will be both.

14 8. First, Brady’s brief is timely because it is filed on February 13, 2020. There are
 15 no local rules governing the time to file an amicus brief. But “[i]n the absence of local rules
 16 governing the role of amicus curiae,” courts in the Western District of Washington have chosen
 17 to “adhere to the applicable rules found in the Federal Rules of Appellate Procedure.” *Microsoft*
 18 *Corp. v. U.S. Dep’t of Justice*, No. C16-0538JLR, 2016 WL 4506808, at *9 (W.D. Wash. Aug.
 19 29, 2016); *see also Skokomish Indian Tribe*, 2013 WL 5720053, at *2. The Federal Rules of
 20 Appellate Procedure provide that “[a]n amicus curiae must file its brief . . . no later than 7 days
 21 after the principal brief of the party being supported is filed.” Fed. R. App. P. 29(e). The
 22 principal brief of the Plaintiff States was filed on February 6, 2020. Accordingly, Brady’s brief
 23 is timely.

24 9. Second, Brady’s brief is useful. Plaintiffs seek a preliminary injunction
 25 prohibiting Defendants from implementing or enforcing rules promulgated by the State and
 26 Commerce Departments that would facilitate the proliferation of 3D-printed firearms. The
 27 Plaintiffs’ lawsuit raises vitally important legal questions about the Second Amendment and the
 28 Administrative Procedure Act that have ramifications beyond the parties directly involved, and

1 Brady can offer unique information and insight on those questions. In particular, the Plaintiff
 2 States argue in the motion for a preliminary injunction that the Defendants failed to provide
 3 adequate notice and opportunity for comment on the Final Rules' provisions related to Firearm
 4 Files. Brady can provide a unique perspective on that issue as one of the parties that commented
 5 on the proposed rules. See Exhibit 2, Exhibit 3. Brady also provides a unique perspective
 6 because Brady has members that reside in states other than the states who participate in the
 7 litigation here. Brady has members in Arizona, Florida, Idaho, Kansas, Kentucky, Nevada,
 8 South Carolina, Texas, and West Virginia. Brady thus believes that the Court will benefit from
 9 the information offered by its brief.

10 10. Brady has conferred with counsel for Plaintiffs and Defendants regarding this
 11 motion. The parties have consented to movants' participation as *amicus curiae*.

12 For the foregoing reasons, the motion should be granted.

13 DATED: February 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED February 13, 2020.

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